IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25529 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAVAR AMBARAM MAGANBHAI - Petitioner
Versus
STATE OF GUJARAT THR' PRINCIPAL SECRETARY & 1 - Respondents

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Appearance :
MR AMIT C NANAVATI for Petitioner
MS KRINA P CALLA, A.G.P. for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 22/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Ms.Krina P.Calla, learned Assistant

Government Pleader, waives service of notice on behalf of the respondents. Having regard to the facts of the case, the petition is heard today.

2. By filing the instant petition under Articles 226 & 227 of the Constitution, the petitioner has prayed to issue a writ of mandamus or a writ of certiorari or any other appropriate writ or order to set aside the order dated February 14, 2006 passed by Mr.B.A.Asari, Special Land Acquisition Officer, (Narmada Yojna), Unit-8, Palanpur, by which the application submitted by the petitioner on October 1, 2001 under Section 28A of the Land Acquisition Act, 1894 ("the Act" for short) is rejected as barred by time prescribed by law.

3. The petitioner is a resident of village Orumana, Taluka : Sami, District : Patan. He was owner of Survey No.371 situated at village Orumana. A proposal was received by the Government to acquire certain lands of village Orumana, including the land of the petitioner,

for the public purpose of construction of Bilera Branch Canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the land of the petitioner and other lands of village Orumana specified in the proposal were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on July 2, 1992. On the basis of the report submitted by the Special Land Acquisition Officer under Section 5A(2) of the Act, the declaration under Section 6 of the Act was made, which was published in the Official Gazette on January 4, 1993. The interested persons were thereafter served with notices for determination of the amount of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.20/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his Award

dated July 1, 1994 offered compensation to the claimants at the rate of Rs. 2.40 ps. per sq.mt. for irrigated lands and Rs. 1.60 ps. per sq.mt. for non-irrigated lands. Being dissatisfied with the same, some of the claimants sought references. Accordingly, references were made to the District Court, Mehsana, where they were registered as Land Acquisition Case Nos.955 to 967 of 1996. The learned Extra Assistant Judge, Mehsana by his judgment and award dated July 2, 2001 awarded additional compensation to the claimants at the rate of Rs. 9.60 ps. per sq.mt. and also granted other benefits enumerated therein. A copy of the award passed by the Reference Court is produced by the petitioner at Annexure-B to the petition. As the Court had awarded to the claimants an amount of compensation in excess of the amount awarded by the Special Land Acquisition Officer under Section 11 of the Act, the petitioner, who was one of the persons interested in his land covered by the same notification issued under Section

4(1) of the Act and was also aggrieved by the award of the Collector, made an application to the Special Land Acquisition Officer under Section 28A of the Act on October 1, 2001. By filing the said application, the petitioner requested the Special Land Acquisition to redetermine the amount of compensation payable to him on the basis of the award of the Court. A copy of the application submitted by the petitioner under Section 28A of the Act on October 1, 2001 is produced by the petitioner at Annexure-C to the petition. The Special Land Acquisition Officer rejected the said application by an order dated September 9, 2003 on the ground that the application was not accompanied with certified copy of the award rendered by the Reference Court in Land Acquisition Case Nos.955 to 967 of 1996. A copy of the said order is produced by the petitioner at Annexure-D to the petition. Thereupon, the petitioner invoked jurisdiction of this Court under Article 226 of the Constitution by filing Special Civil

Application No. 8587 of 2004. The Court allowed the petition by judgment dated April 1, 2005 and issued following directions in operative part of the judgment :

> *12. We, therefore, quash and set aside the impugned order dated 9.9.2003 and direct respondent No.2 to reconsider the case of the petitioner. It is clarified that at the time of hearing of the application, if the petitioner is called upon to produce a certified copy of the award on which he wants to rely upon, the petitioner shall procure the same and place the same before respondent No.2 for his consideration.*
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> *13. We further clarify that it would be open to the respondent to reject the application if he comes to a conclusion that the original application submitted under the provisions of Section 28A of the Act was not submitted within the period of limitation or if he finds that there is any reason for not entertaining the application. In other words, respondent No.2 shall look into the application on merits and decide the same as we have not examined any other aspect in the matter.*
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> *14. Respondent No.2 shall reconsider the application and after hearing the petitioner, take a fresh decision as soon as possible. The matter is remanded to the respondent accordingly. Rule is made absolute with no order as to costs."*

A copy of the judgment of the High Court rendered in Special Civil Application No. 8587 of 2004 is produced by the petitioner at Annexure-E to the petition.

4. After disposal of Special Civil Application No.8587 of 2004, the petitioner addressed a representation dated August 8, 2005 to the Special Land Acquisition Officer, Narmada Yojna, Unit-8, Palanpur requesting him to decide his application dated October 1, 2001 filed under Section 28A of the Act in the light of directions given by the Court. A copy of the representation is produced at Annexure-F to the petition. On receipt of the representation, Mr.B.A.Asari Special Land Acquisition Officer, rejected the application submitted by the petitioner on October 1, 2001 under Section 28A of the Act vide order dated February 14, 2006 on the ground that it was time-barred. A copy of the said order dated February 14, 2006 is produced by the petitioner at Annexure-G to the petition.

5. The case of the petitioner is that the award of the Court was rendered on July 2, 2001 and he had applied for the certified copy of the same on July 4, 2001, after which, the application under Section 28A of the Act was filed on October 1, 2001, and as the certified copy of the award was made ready for delivery on July 17, 2001, the application submitted by him under Section 28A of the Act on October 1, 2001 could not have been rejected on the ground that it was time-barred. The petitioner has claimed that the order passed by Mr. Asari i.e. respondent No.2 is arbitrary, discriminatory as well as violative rights guaranteed to him under Articles 14, 19(1)(2) as well as 300A of the Constitution and, therefore, the same deserves to be set aside. What is asserted by the petitioner is that without appreciating the facts of the case, the respondent No.2 has rejected his application submitted under Section 28A of the Act on October 1, 2001 as barred by limitation and, therefore,

the order impugned in the petition should be set aside. Under the circumstances, the petitioner has filed the instant petition and claimed relief to which reference is made earlier.

6. The instant petition was placed for admission hearing before the Court on December 8, 2006 and after hearing the learned Counsel for the petitioner, notice was issued making the same returnable on December 26, 2006. The order-sheet indicates that thereafter the matter was adjourned from time to time at the instance of the learned Assistant Government Pleader to enable the respondent No.2 to file affidavit-in-reply. However, no affidavit-in-reply has been filed by Mr.B.A.Asari, Special Land Acquisition Officer (Narmada Project), Unit No.8, Palanpur, controverting the averments made in the petition.

7. This Court has heard Mr.Amit C.Nanavati, learned Counsel for the petitioner and Ms.Krina P.Calla, learned Assistant Government Pleader,

for the respondents, at length and in great detail. This Court has also considered the documents forming part of the petition.

8. From the record of the case, it is evident that the land of the petitioner and other lands situated at village Orumana, Taluka: Sami, District: Patan, were acquired for the public purpose pursuant to issuance of notification under Section 4(1) of the Act, which was published in Official Gazette on July 2, 1992. The Land Acquisition Officer had made his award on July 1, 1994 and offered compensation to the claimants at the rate of Rs. 2.40 ps. per sq.mt. for irrigated lands and Rs.1.60 ps. for non-irrigated lands. The petitioner had not made any application to the Special Land Acquisition Officer under Section 18 of the Act. However, the other claimants, who were dissatisfied with the offer of compensation made by the Special Land Acquisition Officer, had sought references. Accordingly, references were made to the District

Court, Mehsana, where they were registered as Land Acquisition Case Nos.955 to 967 of 1996. The learned Extra Assistant Judge, Mehsana allowed those references by judgment and award dated July 2, 2001 holding that the claimants were entitled to additional compensation at the rate of Rs.9.60 Ps.per sq.mt. Though the petitioner had not made any application to the Special Land Acquisition Officer under Section 18 of the Act, he was aggrieved by the award of the Special Land Acquisition Officer. He, therefore, made an application under Section 28A of the Act on October 1, 2001, and requested the Special Land Acquisition Officer to redetermine the amount of compensation payable to him on the basis of the award of the Court. The law does not require that the application which may be submitted under Section 28A of the Act must be accompanied with certified copy of the award of the Court relied upon. However, the application submitted by the petitioner under Section 28A of the Act was rejected by the Special Land Acquisition Officer

vide order dated September 9, 2003 on the ground that the application was not accompanied with the certified copy of the award of the Court relied upon. Thereupon, the petitioner had invoked jurisdiction of this Court under Article 226 of the Constitution by filing Special Civil Application No. 8587 of 2004. The Division Bench of this Court noticed law propounded in C.N.Patel v. Special Land Acquisition Officer, 2005(1) GLH 88, and set aside the order dated September 9, 2003 by which the application submitted by the petitioner under Section 28A of the Act was rejected on the ground that it was not accompanied with certified copy of the award relied upon. The Division Bench directed the respondent No.2 to decide the application on merits after hearing the petitioner. After the High Court delivered the judgment in Special Civil Application No. 8587 of 2004, the petitioner made representation dated August 8, 2005 to the Special Land Acquisition Officer, Palanpur and requested him to decide his

application dated October 1, 2001 filed under Section 28A of the Act in the light of the observations made by the High Court. However, Mr.B.A.Asari, who was then Special Land Acquisition Officer (Narmada Yojna) Unit No.8, Palanpur, rejected the application submitted by the petitioner under Section 28A of the Act vide order dated February 14, 2006 on the ground that the same was filed beyond the period of limitation prescribed by law. A bare perusal of the order produced at Annexure-G to the petition makes it evident that no reasons have been assigned by the respondent No.2 as to why the application, which was submitted by the petitioner under Section 28A of the Act on October 1, 2001 is treated as time-barred. The award of the Court was rendered on July 2, 2001, whereas the application under Section 28A of the Act was submitted on October 1, 2001 and, therefore, it was within the period of three months from the date of the award as contemplated by Section 28A of the Act. The record further

shows that the petitioner had applied for certified copy of the award of the Court on July 4, 2001, which was made ready for delivery on July 17, 2001, but, the respondent No.2 had never called upon the petitioner to produce the same for his perusal. In fact, the order dated February 14, 2006 rejecting the application submitted by the petitioner under Section 28A of the Act as time-barred does not indicate that the respondent No.2 had made any inquiry as contemplated by sub-section(2) of Section 28A of the Act. What is contemplated by Section 28A of the Act is that a person aggrieved by the award of the Collector is entitled to request the Collector to redetermine the amount of compensation payable to him on the basis of the award of the Court, notwithstanding the fact that he had not made an application to the Collector under Section 18 of the Act, and that such an application has to be submitted within three months from the date of the award of the Court. The Section nowhere prescribes that such an

application should be accompanied with certified copy of the award of the Court. The proviso to sub-section(1) of Section 28A of the Act, inter alia, stipulates that in computing the period of three months, within which an application to the Collector has to be made under sub-section (1) of Section 28A of the Act, the day on which the award was pronounced and the time requisite for obtaining a copy of the award has to be excluded. Even if it is assumed for the sake of argument that the application submitted by the petitioner on October 1, 2001 was not filed within a period of three months from the date of the award of the Court, it is very clear that the time requisite for obtaining certified copy of the award of the Court was required to be excluded. If the time spent in obtaining certified copy of the award is excluded as contemplated by the Proviso to sub-section(1) of Section 28A of the Act, it becomes, at once, evident that the application submitted by the petitioner under Section 28A of the Act was within the time prescribed by law. On the

facts and in the circumstances of the case, this Court is of the opinion that the order, by which the application submitted by the petitioner under Section 28A of the Act on October 1, 2001 is rejected as time-barred, is arbitrary, unreasonable and passed without application of mind. A poor farmer residing in a remote village of District Patan has been compelled to approach the Court again and again for redressal of his grievance. The impugned order is not defendable at all and, therefore, the same deserves to be set aside. As this Court has come to the conclusion that Mr.B.A.Asari i.e. respondent No.2 has exercised statutory powers vested in him under Section 28A of the Act arbitrarily and, therefore, the impugned order is liable to be set aside, this Court is of the opinion that interest of justice would be served if the respondent No.2 is directed to decide the application submitted under Section 28A of the Act and make payment of compensation to the petitioner within the time to be stipulated by the Court, whereas Mr.B.A.Asari,

Special Land Acquisition Officer, is directed to bear cost incurred by the petitioner, which is quantified at Rs.15,000/- (Rupees Fifteen Thousand only).

For the foregoing reasons, the petition succeeds. The order dated February 14, 2006 produced at Annexure-G to the petition, by which the application submitted by the petitioner under section 28A of the Act on October 1, 2001 is rejected on the ground that the same was filed beyond the period of limitation prescribed by law, is hereby set aside. The respondent No.2 is hereby directed to decide the said application in terms of the award of the Court and pass appropriate award under Section 28A of the Act within one month from the date of receipt of the writ. The respondent No.2 is also directed to pay the amount of compensation to the petitioner within one month from the date of the award made under Section 28A of the Act. Mr.B.A.Asari, the then Special Land Acquisition Officer (Narmada

Yojna) Unit No.8, Palanpur, is directed to bear the cost of the petition which is quantified at Rs. 15,000/- (Rupees Fifteen Thousand only) and pay the same to the petitioner within two weeks from today by Account Payee Cheque, failing which the Collector, Palanpur, shall recover the said amount from Mr.B.A.Asari as arrears of land revenue and pay the amount recovered to the petitioner after due verification. The Registry is directed to send a copy of this order to the Collector, Palanpur for necessary compliance.

Subject to abovereferredto directions, rule is made absolute. D.S.Permitted.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J]

(patel)